MICHIGAN COURTS NEWS RELEASE
John Nevin, Communications Director
Ph: 517-373-0129 Twitter: @MISupremeCourt FB: facebook.com/misupremecourt

FOR IMMEDIATE RELEASE

Michigan Supreme Court to hear oral arguments January 13 and 14, 2016

LANSING, MI, January 7, 2016 - The Michigan Supreme Court will hear oral arguments on January 13 and 14 on the sixth floor of the Michigan Hall of Justice. Oral argument on January 13 will begin at 10 a.m.; on January 14, oral argument will begin at 9:30 a.m. The cases involve a claim of medical malpractice, criminal appeals, and questions concerning environmental regulation, Michigan election law statutes, jury instruction, and attorney fees.

Oral arguments are open to the public. Links to the briefs and case summaries are available here.

The Court broadcasts its oral arguments and other hearings live on the Internet via streaming video technology. Watch the stream live only while the Court is in session and on the bench. Streaming will begin shortly before the hearings start; audio will be muted until justices take the bench.

Please see the link to Request and Notice for Film and Electronic Media Coverage of Court Proceedings.

Michigan Supreme Court Oral Arguments
January 13 and 14, 2016

These brief accounts may not reflect the way that some or all of the Court's seven justices view the cases. The attorneys may also disagree about the facts, issues, procedural history, and significance of these cases. For further details about the cases, please contact the attorneys.

Morning Session

Docket # 150719

DUSTIN ROCK, Mark R. Granzotto
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Kent – Redford, J.)

DR. K. THOMAS CROCKER and DR. K. THOMAS CROCKER, D.O., P.C., Noreen L. Slank
Defendants-Appellants.

Defendant Dr. K. Thomas Crocker, a board-certified orthopedic specialist, operated on plaintiff Dustin Rock's ankle and provided postsurgical care. Rock sued Dr. Crocker for medical malpractice. Rock's standard-of-care expert witness was board certified in orthopedic surgery at the time of the alleged

malpractice, but was not a board-certified specialist at the time of trial. In a published opinion, the Court of Appeals ruled that the expert was qualified to testify under MCL 600.2169. The Court of Appeals also ruled that evidence regarding breaches of the standard of care may be admissible even if those breaches did not cause any injury. It remanded the case to the trial court for consideration of this question under MRE 403. The Supreme Court will consider: (1) whether allegations relating to violations of the standard of care that did not cause the plaintiff's injury are admissible as evidence of negligence; and (2) whether, if a defendant is a board-certified specialist, MCL 600.2169(1)(a) only requires an expert to be board certified in that same specialty at the time of the alleged malpractice, and not at the time of trial.

Docket # 150395
In re Application of CONSUMERS ENERGY COMPANY for Reconciliation of 2009 Costs

---

TES FILER CITY STATION LIMITED PARTNERSHIP, Appellant,	David E. S. Marvin
v (Appeal from Ct of Appeals) (PSC)	
CONSUMERS ENERGY COMPANY, Petitioner-Appellee, and	Robert W. Beach
MICHIGAN PUBLIC SERVICE COMMISSION and ATTORNEY GENERAL, Appellees.	Lauren D. Donofrio Robert P. Reichel

TES Filer City Station is an electricity generating plant that generates some of its electricity from wood waste. In 2007, the Michigan Department of Environmental Quality (DEQ) promulgated regulations requiring biomass plants (like TES Filer) to purchase NOx emission allowances beginning in 2009. The United States Environmental Protection Agency conditionally approved the DEQ regulations in 2007, and finally approved them in 2009. TES Filer purchased seasonal and annual NOx allowances in 2009. It then sought to recover the cost of the NOx allowances under MCL 460.6a(8). Under this statute, the costs would be recoverable only if they were "incurred due to changes in federal or state environmental laws or regulations that are implemented after" October 6, 2008. The Michigan Public Service Commission concluded that TES Filer could not recover the cost of purchasing the NOx allowances because the DEQ's regulations were not "implemented after" October 6, 2008. The Court of Appeals agreed in a published opinion, with one judge dissenting. The Supreme Court will consider when the DEQ's administrative rules requiring generators to purchase NOx allowances were "implemented," as that term is used in MCL 460.6a(8).

Afternoon Session

Docket # 150677

PEOPLE OF THE STATE OF MICHIGAN, Richard L. Cunningham
Plaintiff-Appellant,

v (Appeal from Ct of Appeals)
(Ottawa – VanAllsburg, J.)

BRANDON MICHAEL HALL, Donald H. Hann
Defendant-Appellee.

Defendant Brandon Michael Hall admitted that he put false names and signatures on nominating petitions being submitted on behalf of a judicial candidate. He was charged with 10 counts of felony election law forgery under MCL 168.937. Hall objected that he could not be charged under the general forgery statute, MCL 168.937, because there was a more specific statute, MCL 168.544c, that addressed "acts of falsifying electoral nominating petitions." The district court agreed, and denied the prosecutor's motion to bind over Hall for trial on the 10 felony counts. The district court ruled that there was probable cause to bind over Hall for trial on 10 misdemeanor violations of MCL 168.544c. Both the circuit court and the Court of Appeals, in an unpublished opinion, affirmed the district court's ruling. In the Supreme Court, the parties have been directed to address: (1) whether Hall's conduct may only be charged under 168.544c; (2) whether the "rule of lenity" applies; and (3) whether charging Hall with felony forgery under MCL 168.937 would violate his due process rights.

Docket # 151076

PEOPLE OF THE STATE OF MICHIGAN, Timothy A. Baughman
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Wayne – Kenny, T.)

KAMERON LEO KILGO, Wade McCann
Defendant-Appellant.

Defendant Kameron Kilgo subscribed to a web-based dating service whose members are required to be at least 18 years old. Kilgo met the complainant through the website, and admits that he and the complainant engaged in sexual acts. In fact, the complainant was only 15 years old. Kilgo was charged with four counts of third-degree criminal sexual conduct (involving a victim over 13 but less than 16 years of age) under MCL 750.520d(1)(a). Kilgo filed a motion to permit the presentation of a reasonable-mistake-of-age defense, but the trial court denied the motion, relying on *People v Cash*, 419 Mich 230 (1984). Kilgo appealed, but the Court of Appeals denied leave to appeal. The Supreme Court has asked the parties to address: (1) whether the Court's decision in *People v Cash* remains viable; and (2) whether the denial of the ability to assert the defense of reasonable mistake of age or fact violates due process or equal protection principles.

Docket # 151342
PEOPLE OF THE STATE OF MICHIGAN, David A. McCreedy
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Wayne – Massey Jones, V.)

TIMOTHY PATRICK MARCH, M. Michael Koroi
Defendant-Appellant.

Defendant Timothy March was charged with larceny for allegedly stealing items, including cabinets, a furnace, and a dishwasher, from his father's home. The items were removed after the home was sold at a foreclosure sale, but before the statutory redemption period expired. March argued that the charges should be dismissed, because he and his father had the right to possess the property until the redemption period expired. He also argued that the items removed from the home were "fixtures," not "goods or property," and therefore insufficient to establish a larceny. The trial court granted March's motion to dismiss. The prosecutor appealed to the Court of Appeals, which reversed in an unpublished opinion per curiam. The Supreme Court will consider: (1) whether March's alleged removal of fixtures from the mortgaged premises after a sheriff's sale but prior to the expiration of the redemption period may subject him to criminal liability for larceny; and (2) whether fixtures taken from real property may be the subject of larceny under MCL 750.356(1).

Thursday, January 14

Morning Session

Docket # 150286
PEOPLE OF THE STATE OF MICHIGAN, Hilary B. Georgia
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(St. Clair – Adair, J.)

ROBIN SCOTT DUENAZ, Christine A. Pagac
Defendant-Appellant.

Defendant Robin Duenez was convicted by a jury of three counts of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct. Duenez raised several issues on appeal, including a claim that the trial court abused its discretion by ruling that evidence regarding the victim's prior sexual abuse by her step-father was inadmissible at trial. In a published opinion, the Court of Appeals affirmed the trial court's ruling, holding that the evidence did not fit within either of the exceptions provided by the rape-shield statute, MCL 750.520j(1), and was not relevant. The Supreme Court has asked the parties to address: (1) whether evidence of a child's prior sexual abuse is "sexual conduct" barred by the rape-shield statute, MCL 750.520j; (2) if so, whether evidence of prior sexual abuse was nevertheless admissible in this instance to preserve the defendant's right of confrontation and to present a defense; and (3) whether any error in excluding evidence of prior sexual abuse in this case was harmless.

Docket # 150857

PEOPLE OF THE STATE OF MICHIGAN, Nicole Matusko
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Ingham – Canady, C)

Yumar Antonio Burks, Daniel J. Rust
Defendant-Appellant.

Defendant Yumar Antonio Burks was convicted by a jury of felony murder, MCL 750.316(1)(b), and first-degree child abuse, MCL 750.136b(2). The convictions stem from the death of his infant son, Antonio. Burks raised several issues in the Court of Appeals, including a claim that the trial court should have instructed the jury on second-degree child abuse. In a split, published opinion, the Court of Appeals agreed that the trial court erred. It held that second-degree child abuse was a necessarily included lesser offense of first-degree child abuse, and that a rational view of the evidence would have supported the jury instruction. The Court of Appeals ruled that the error was harmless; however, because Burks did not establish that it was more probable than not that the jury would have convicted him of second-degree child abuse rather than first-degree child abuse. The Supreme Court will consider whether the trial court erred in refusing Burk's request for a jury instruction on the offense of second-degree child abuse.

Docket # 150834

LINDITA PIRGU, Guardian and Conservator Of the Estate of FERIDON PIRGU, a Legally Incapacitated Person, Richard E. Shaw
Plaintiff-Appellant,

v (Appeal from Ct of Appeals)
(Oakland – McDonald, J.)

UNITED SERVICES AUTOMOBILE ASSOCIATION, d/b/a USAA INSURANCE AGENCY, INC., Susan Leigh Brown
Defendant-Appellee.

Plaintiff Lindita Pirgu, as guardian and conservator of Feridon Pirgu, obtained a judgment of $70,237.44 for unpaid no-fault personal protection insurance (PIP) benefits and penalty interest. As allowed by MCL 500.3148(1), Pirgu was also granted $23,412.48 in attorney fees against defendant, United Service Automobile Association, due to the defendant's unreasonable failure to pay PIP benefits. The attorney fee award was less than the amount that Pirgu had sought, and she appealed to the Court of Appeals, arguing that the trial court applied the wrong legal standard and erred in its calculation of the fees to which she was entitled. The Court of Appeals affirmed in a split, unpublished opinion, holding that the trial court's analysis was consistent with *Wood v DAIIE*, 413 Mich 573 (1982), and that *Smith v Khouri*, 481 Mich 519 (2008), did not apply. At issue in the Supreme Court is whether the determination of reasonable attorney fees under MCL 500.3148(1) is governed by *Smith v Khouri* or *Wood v DAIIE*, and whether the trial court abused its discretion in calculating the attorney fee award.

-MSC-